

ADA Amendments Likely to Trigger Increase in Accommodation Requests

On June 25, 2008, the House of Representatives overwhelmingly passed the ADA Amendments Act of 2008 (the "Act"), a bill that significantly expands the Americans with Disabilities Act ("ADA"). The Senate passed a similar version of the Act on September 11, 2008, and it is anticipated that the changes to the ADA will become effective January 1, 2009. It is therefore crucial that employers familiarize themselves with the pending changes and begin assessing now how their existing policies and practices may be impacted.

The Act's stated purpose is to "restore the intent and protections" of the ADA, which many legislators and disability advocacy groups believe have been unduly diminished by a string of Supreme Court decisions narrowing the scope of protections afforded by the ADA. For employers, the most significant changes proposed by the Act include:

- To determine whether an individual's impairment constitutes a disability, the term "substantially limits" is replaced with "materially restricts." Thus, a person is disabled under the ADA if he or she has a physical or mental impairment that materially restricts one or more major life activities. This lower threshold requirement broadens the class of disabled persons to include those individuals who have more than a nominal restriction, but less than a severe restriction on a major life activity.
- The Act contains a nonexclusive list of major life activities, which includes reading, learning, concentrating, thinking, communicating, working, and major bodily functions (e.g. immune system, bladder, reproductive system). This may further broaden the scope of impairments for which employers are required to provide reasonable accommodations.
- An impairment that is episodic or in remission constitutes a disability if it would materially restrict a major life activity when active. Examples of such conditions include cancer, epilepsy, diabetes, cerebral palsy, and muscular dystrophy.
- Employers will no longer be allowed to consider mitigating measures such as medications, equipment, assistive technology, or auxiliary devices in determining whether an individual is disabled. Thus, even if an employee uses a mitigating measure to alleviate the effects of a disability, the employee is still considered disabled for ADA purposes. The only mitigating measure that can be considered when determining if an individual has a disability is the use of prescription eye glasses or contacts.
- Individuals that are "regarded as" having a minor or temporary impairment with an actual or expected duration of six months or less are not considered disabled under the ADA.
- Employers do not have to provide reasonable accommodations to individuals who are only "regarded as" having an impairment.

Enactment of the Act will affect employers in several ways. Most significantly, employers will likely see an increase in accommodation requests, as more individuals will be considered disabled under the ADA. Employers should prepare to address the higher number of accommodation requests by familiarizing themselves with their legal obligations in this regard and by incorporating such obligations into clearly articulated policies and practices. The Act will also likely make it harder for employers to win summary judgment in ADA cases, and is sure to lead to increased litigation related to the definition of "disability."

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